Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Petition of Cincinnati Bell Telephone Company LLC (CBT) for Phase I Pricing Flexibility for Special Access, Dedicated Transport Services and End-User Channel Terminations, and Phase II Pricing Flexibility for POP Channel Terminations in the Cincinnati, Ohio-Kentucky-Indiana Metropolitan Statistical Area, and Phase I Pricing Flexibility for Special Access, Dedicated Transport Services and POP Channel Terminations in the Hamilton-Middletown, Ohio Metropolitan Statistical Area	)	WCB/Pricing File No. 07-20

ORDER

Adopted: March 13, 2008 **Released: March 13, 2008**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. On November 27, 2007, Cincinnati Bell Telephone Company LLC (Cincinnati Bell) filed a petition seeking pricing flexibility pursuant to sections 1.774 and 69.701 *et seq*. of the Commission's rules[1] for: (1) certain special access, dedicated transport and end-user channel termination services, and POP channel termination services in the Cincinnati, OH-KY-IN Metropolitan Statistical Area (MSA); and (2) certain special access, dedicated transport, and POP channel termination services in the Hamilton-Middletown, OH MSA.[2] On December 18, 2007, the Commission issued a public notice seeking comments on the Petition, and Sprint Nextel filed an opposition.[3] As detailed below, the Commission

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[1] 47 C.F.R. §§ 1.774, 69.701 *et seq*.

[2] *See* Petition of Cincinnati Bell Telephone Company LLC for Phase I Pricing Flexibility for Special Access, Dedicated Transport Services and End-User Channel Terminations, and Phase II Pricing Flexibility for POP Channel Terminations in the Cincinnati, Ohio-Kentucky-Indiana Metropolitan Statistical Area, and Phase I Pricing Flexibility for Special Access, Dedicated Transport Services and POP Channel Terminations in the Hamilton-Middletown, Ohio Metropolitan Statistical Area (filed Nov. 27, 2007) (Petition). A list of the specific services for which Cincinnati Bell seeks pricing flexibility can be found in the Appendix to this order.

[3] *Pleading Cycle Established for Cincinnati Bell Telephone Company Petition for Pricing Flexibility for Special Access Services, Dedicated Transport Services, and Channel Termination Services*, WCB/Pricing No. 07-20, Public Notice, DA 07-5032 (Wireline Comp. Bur. rel. Dec. 18, 2007); *See* Comments of Sprint Nextel Corporation, WCB/Pricing No. 07-20 (filed Jan. 7, 2008) (Sprint Nextel Opposition).

established the rules for granting pricing flexibility for special access and dedicated transport services in its *Pricing Flexibility Order*.[4] In doing so, the Commission recognized the importance of granting pricing flexibility to incumbent local exchange carriers (LECs) as competition develops in the market for interstate access services "to ensure that our own regulations do not unduly interfere with the operation of these markets."[5] For the reasons that follow, we grant Cincinnati Bell's petition.

II. BACKGROUND

2. To recover the costs of providing interstate access services, incumbent LECs charge interexchange carriers (IXCs) and end users for access services in accordance with the Commission's Part 69 access charge rules.[6] In the *Access Charge Reform First Report and Order*, the Commission adopted a market-based approach to access charge reform, pursuant to which it would relax restrictions on incumbent LEC pricing as competition emerges.[7] At that time, the Commission deferred resolution of the specific timing and degree of pricing flexibility to a future order.[8] Subsequently, in the *Pricing Flexibility Order*, the Commission provided detailed rules for implementing the market-based approach.[9]

3. The framework the Commission adopted in the *Pricing Flexibility Order* grants progressively greater flexibility to LECs subject to price cap regulation as competition develops, while ensuring that price cap LECs: (1) do not use pricing flexibility to deter efficient entry or engage in exclusionary pricing behavior; and (2) do not increase rates to unreasonable levels for customers that lack competitive alternatives.[10] In addition, the reforms are designed to facilitate the removal of services from

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[4] *See Access Charge Reform,* CC Docket No. 96-262, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221 (1999) (*Pricing Flexibility Order*), *aff'd*, *WorldCom, Inc. v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

[5] *Pricing Flexibility Order*, 14 FCC Rcd at 14224, para. 1.

[6] 47 C.F.R. Part 69. Part 69 establishes two basic categories of access services: special access services and switched access services. *Compare* 47 C.F.R. § 69.114 *with* 47 C.F.R. § 69.106. Special access services employ dedicated facilities that run directly between the end user and an IXC point of presence (POP), the physical point where an IXC connects its network with the LEC network. Charges for special access services generally are divided into channel termination charges and interoffice facility charges. Channel termination charges (which can include a flat-rated charge and a mileage component) recover the costs of facilities between the customer's premises and the LEC end office and the costs of facilities between the IXC POP and the LEC serving wire center. *See* 47 C.F.R. § 69.703(a). Interoffice facility charges recover the costs of facilities between the LEC serving wire center and the LEC end office serving the end user. *See Pricing Flexibility Order*, 14 FCC Rcd at 14226-27, paras. 8-10. For the interoffice facility, carriers often have separate termination and mileage charges.

[7] *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982 (1997) (*Access Charge Reform First Report and Order*), *aff'd, Southwestern Bell Tel. Co. v. FCC,* 153 F.3d 523 (8th Cir. 1998).

[8] *Access Charge Reform First Report and Order*, 12 FCC Rcd at 15989, para. 14.

[9] *Pricing Flexibility Order*, 14 FCC Rcd at 14225, para. 4.

[10] *Id*. at 14225, para. 3. The Commission instituted price cap regulation for the Regional Bell Operating Companies (RBOCs) and GTE in 1991, and permitted other LECs to adopt price cap regulation voluntarily, subject to certain conditions. *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6818-20, paras. 262-79 (1990). The *Pricing Flexibility Order* applies only to LECs that are subject to price cap regulation. *Pricing Flexibility Order,* 14 FCC Rcd at 14224, para. 1 n.1.

price cap regulation as competition develops in the marketplace, without imposing undue administrative burdens on the Commission or the industry.[11]

4. In keeping with these goals, the Commission established a framework for granting price cap LECs greater flexibility in the pricing of interstate access services once they make a competitive showing, or satisfy certain "triggers," to demonstrate that market conditions in a particular area warrant the relief they seek. Pricing flexibility for special access and dedicated transport services[12] is available in two phases, based on an analysis of competitive conditions in individual MSAs or non-MSA parts of the study area.[13] Pricing flexibility for channel termination services[14] is also available in two phases, based on an analysis of competitive conditions in individual MSAs or non-MSA parts of the study area.[15]

5. Phase I Pricing Flexibility. A price cap LEC that obtains Phase I relief is allowed to offer, on one day's notice, contract tariffs[16] and volume and term discounts for qualifying services, so long as the services provided pursuant to contract are removed from price caps.[17] To protect those customers that may lack competitive alternatives, a price cap LEC receiving Phase I flexibility must maintain its generally available, price cap-constrained, tariffed rates for these services.[18] To obtain Phase I relief, a price cap LEC must meet triggers designed to demonstrate that competitors have made irreversible, sunk investments in the facilities needed to provide the services at issue.[19] In particular, to receive pricing flexibility for dedicated transport and special access services (other than channel terminations to end users), a price cap LEC must demonstrate that unaffiliated competitors have collocated in at least 15 percent of the LEC's wire centers within an MSA, or have collocated in wire centers accounting for 30 percent of the LEC's revenues from these services within an MSA.[20] In both cases, the price cap LEC also must show, with respect to each wire center used to satisfy the trigger, that

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[11] *Pricing Flexibility Order*, 14 FCC Rcd at 14225, para. 3.

[12] For purposes of pricing flexibility proceedings, "dedicated transport services" refer to services associated with entrance facilities, direct-trunked transport, and the dedicated component of tandem-switched transport. *Id*. at 14234, para. 24 n.54. These services are defined in 47 C.F.R. § 69.2(oo) (direct-trunked transport), § 69.2(qq) (entrance facilities), and § 69.2(ss) (tandem-switched transport).

[13] *See* 47 C.F.R. § 22.909(a) (definition of MSA). *See also Pricing Flexibility Order,* 14 FCC Rcd at 14261, para. 76 (pricing flexibility will be granted to price cap LECs within the non-MSA parts of a study area if they satisfy the applicable triggers throughout that area).

[14] For purposes of pricing flexibility proceedings, a channel termination between a LEC end office and a customer premises is defined as a "dedicated channel connecting a LEC end office and a customer premises, offered for purposes of carrying special access traffic." 47 C.F.R. § 69.703(a)(2).

[15] *See supra* note 13.

[16] A contract tariff is a tariff based on an individually negotiated service contract. *See Competition in the Interstate Interexchange Marketplace,* CC Docket No. 90-132, Report and Order, 6 FCC Rcd 5880, 5897, para. 91 (1991) (*Interexchange Competition Order*); 47 C.F.R. § 61.3(o). *See also* 47 C.F.R. § 61.55 (describing required composition of contract-based tariffs).

[17] *Pricing Flexibility Order,* 14 FCC Rcd at 14287-88, para. 122.

[18] *Id.* at 14234-35, para. 24.

[19] *Id.* at 14234-35, 14274, paras. 24, 94.

[20] *Id.* at 14274-77, paras. 95-98; 47 C.F.R. § 69.709(b).

at least one collocator is relying on transport facilities provided by an entity other than the incumbent LEC.[21]

6. Higher thresholds apply for obtaining Phase I pricing flexibility for channel terminations between a LEC's end office and an end user customer. A competitor collocating in a LEC end office continues to rely on the LEC's facilities for the channel termination between the end office and the customer premises, at least initially, and thus is more susceptible to exclusionary pricing behavior by the LEC.[22] As a result, a price cap LEC must demonstrate that unaffiliated competitors have collocated in at least 50 percent of the LEC's wire centers within an MSA, or have collocated in wire centers accounting for 65 percent of the LEC's revenues from these services within an MSA.[23] Again, the LEC also must demonstrate, with respect to each wire center used to satisfy the trigger, that at least one collocator is relying on transport facilities provided by an entity other than the incumbent LEC.[24]

7. Phase II Pricing Flexibility. A price cap LEC that receives Phase II relief is allowed to offer dedicated transport and special access services free from the Commission's Part 69 rate structure and Part 61 price cap rules.[25] The LEC, however, is required to file, on one day's notice, generally available tariffs for those services for which it receives Phase II relief.[26] To obtain Phase II relief, a price cap LEC must meet triggers designed to demonstrate that competition for the services at issue within the MSA is sufficient to preclude the incumbent from exploiting any individual market power over a sustained period. To obtain Phase II relief for dedicated transport and special access services (other than channel terminations to end users), a price cap LEC must demonstrate that unaffiliated competitors have collocated in at least 50 percent of the LEC's wire centers within an MSA, or have collocated in wire centers accounting for 65 percent of the LEC's revenues from these services within an MSA.[27] The LEC also must demonstrate, with respect to each wire center used to satisfy the trigger, that at least one collocator is relying on transport facilities provided by an entity other than the incumbent LEC.[28]

8. Higher thresholds apply for obtaining Phase II pricing flexibility relief for channel terminations between a LEC end office and an end user customer. To obtain such relief, a price cap LEC must demonstrate that unaffiliated competitors have collocated in at least 65 percent of the LEC's wire centers within an MSA, or have collocated in wire centers accounting for 85 percent of the LEC's revenues from these services within an MSA.[29] To obtain Phase II relief for channel terminations to end

[21] 47 C.F.R. § 69.709(b).

[22] *Pricing Flexibility Order*, 14 FCC Rcd at 14278-79, paras. 102-103.

[23] *Id*. at 14280-81, paras. 105-06; 47 C.F.R. §§ 69.711(a), (b).

[24] 47 C.F.R. §§ 69.711(a), (b).

[25] *See Pricing Flexibility Order,* 14 FCC Rcd at 14301, para. 153.

[26] *Id.*; 47 C.F.R. § 69.727(b)(3).

[27] *Pricing Flexibility Order*, 14 FCC Rcd at 14299, paras. 148-49; 47 C.F.R. § 69.709(c).

[28] 47 C.F.R. § 69.709(c).

[29] *Pricing Flexibility Order*, 14 FCC Rcd at 14235, 14299-300, paras. 25, 150; 47 C.F.R. § 69.711(c).

users, the LEC also must demonstrate, with respect to each wire center used to satisfy the trigger, that at least one collocator is relying on transport facilities provided by an entity other than the incumbent LEC.[30]

9. Competitive Showing. Pricing flexibility may be granted upon the satisfaction of certain competitive showings. An incumbent LEC bears the burden of proving that it has satisfied the applicable triggers for the pricing flexibility it seeks for each MSA.[31] For special access and dedicated transport services and channel termination services the incumbent must identify: (1) the total number of wire centers in the MSA; (2) the number and location of the wire centers in which competitors have collocated; and (3) in each wire center on which the incumbent bases its petition, the name of at least one collocator that uses transport facilities owned by a provider other than the incumbent to transport traffic from that wire center.[32] In addition to these three requirements, the petitioner must show either: (A) that the percentage of wire centers in which competitors have collocated and use competitive transport satisfies the trigger the Commission adopted with respect to the pricing flexibility sought by the incumbent LEC;[33] or (B) that the percentage of total base period[34] revenues that are attributable to the wire centers upon which the petitioner relies satisfies the applicable pricing flexibility triggers.[35]

III. DISCUSSION

10. Cincinnati Bell seeks Phase I pricing flexibility in the Cincinnati, OH-KY-IN MSA for special access, dedicated transport and end-user channel termination services between its end offices and end user "customer premises," and Phase II pricing flexibility in the Cincinnati, OH-KY-IN MSA for POP channel terminations.[36] Cincinnati Bell also seeks Phase I pricing flexibility for special access services (other than channel termination services between its end offices and end user "customer premises,"), dedicated transport, and POP channel termination services in the Hamilton-Middletown, OH MSA.[37] As noted above, pricing flexibility may be granted upon the satisfaction of certain competitive showings. An incumbent LEC bears the burden of proving that it has satisfied the applicable triggers for the pricing flexibility it seeks for each MSA.[38]

11. Cincinnati Bell has demonstrated compliance with the requirements for Phase I and Phase II pricing flexibility. Cincinnati Bell has provided sufficient information to demonstrate that it meets the applicable pricing flexibility triggers for the relief it has requested. As explained in greater detail below, to make this showing, Cincinnati Bell assigned wire centers to individual MSAs and identified wire

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[30] 47 C.F.R. § 69.711(c).

[31] *Pricing Flexibility Order*, 14 FCC Rcd at 14309, para. 172.

[32] 47 C.F.R. § 1.774(a)(3)(i)-(iii).

[33] 47 C.F.R. § 1.774(a)(3)(iv)(A).

[34] For price cap LECs, the "base period" is the 12-month period (i.e., the calendar year) ending six months before the effective date of the LECs' annual access tariffs. 47 C.F.R. § 61.3(g).

[35] The revenues applicable to this requirement are those generated by the services for which the incumbent seeks relief. 47 C.F.R. § 1.774(a)(3)(iv)(B).

[36] *See* Petition at 2-3.

[37] *See id.* at 3.

[38] *Pricing Flexibility Order*, 14 FCC Rcd at 14309, para. 172.

centers within each MSA where service providers have obtained collocation with alternative facilities other than Cincinnati Bell-provided transport.[39] Cincinnati Bell also gathered revenue data and assigned it either to dedicated transport and special access services (other than channel terminations to the end user), or to channel terminations between an end user's premises and the Cincinnati Bell end offices.[40]

12. Cincinnati Bell identified the MSAs that qualify for pricing flexibility by: (1) assigning wire centers to individual MSAs and identifying wire centers within each MSA where service providers have obtained collocation with alternative facilities other than Cincinnati Bell-provided transport; (2) calculating POP channel termination and end-user channel termination revenues earned in each MSA; (3) calculating POP channel termination and end-user channel termination revenue attributable to each collocated wire center within the MSA; and (4) calculating the percentage of such revenue earned in the collocated wire centers in the MSA.[41]

13. In order to identify wire centers with collocation, Cincinnati Bell examined its billing records to determine those customers that were billed monthly recurring charges for collocation floor space and other applicable collocation rate elements.[42] Cincinnati Bell then performed physical inventories to validate the accuracy of the billing information and to confirm that the collocation was operational.[43] To confirm that the competitors were using transport facilities owned by a transport provider other than Cincinnati Bell, Cincinnati Bell used information supplied previously by the competitors or physically verified that the competitor had transport facilities owned by a non-Cincinnati Bell provider.[44] In accordance with the Commission's rules, Cincinnati Bell served a copy of its petition on each of the collocating carriers upon which it relied, including, for each collocator, the information about that party upon which Cincinnati Bell relied in its petition.[45]

14. To ascertain revenue associated with special access and dedicated transport services and channel termination services, Cincinnati Bell gathered data for the twelve-month period ending December 31, 2006, from its internal databases.[46] In particular, for entrance facilities and channel terminations between an IXC POP and a serving wire center, 100 percent of associated revenue was assigned to the Cincinnati Bell wire center.[47] For channel terminations between a Cincinnati Bell end office and a

[39] Petition, Attach. B at 8-9.

[40] *Id.* at 3; Attach. C, D.

[41] *Id.* at Attach. B at 8.

[42] *Id*. at 8-9.

[43] *Id.* at 9.

[44] *Id*.

[45] *Id*. at Attach. G; *see also* 47 C.F.R. § 1.774(e)(1)(ii).

[46] *Id*. at Attach. B at 9. Cincinnati Bell states that "information extracted from the 2006 billing records was at the circuit level detail in order to assign the individual revenue elements to the proper pricing flexibility revenue category for each wire center." *Id.* at 9-10. The billing system used for this process was the Customer Access Billing System (CABS) which contains current customer records and historical billing records. *Id.* at 10 n.9. All revenues were determined based on annual 2006 base period revenues. *Id*. at 11.

[47] *Id*. at 10.

customer premises, 100 percent of the associated revenue was assigned to the Cincinnati Bell end office.[48] Cincinnati Bell states that it differentiated revenues associated with local channels provided to end users from other special access and dedicated transport revenues.[49] Cincinnati Bell then further aggregated the revenue by Universal Service Order Code (USOC) to determine the local channel revenues attributable to each wire center.[50] Cincinnati Bell then examined each record using the POP/end user field to determine the appropriate assignment of revenues into either the POP or end user classification, and whether the percentage of revenue in each classification met the applicable trigger.[51]

15. After reviewing Cincinnati Bell's verification method as described in the Petition and the data provided in the public and confidential versions of the Petition, we find that Cincinnati Bell has met the applicable triggers in section 1.774 and Part 69, Subpart H of the Commission's rules.[52] The method used by Cincinnati Bell to capture and assign revenues to particular services and wire centers is consistent with the method the Wireline Competition Bureau has approved in prior pricing flexibility applications.[53] Based upon a review of the information submitted, and having received no opposition challenging Cincinnati Bell's compliance with the pricing flexibility triggers,[54] we conclude that Cincinnati Bell has satisfied its burden of demonstrating that it has met the applicable requirements for each of the various services in the MSAs for which it requests relief.

[48] *Id.*

[49] *Id*. at 10-11. Cincinnati Bell maintains information in its billing system that identifies end user circuits using a ZZZ Access Customer Name Abbreviation (ACNA). Circuit locations with an ACNA other than "ZZZ" are associated with channel terminations between Cincinnati Bell's serving wire center and another carrier's point of presence. *Id*. at 10.

[50] *Id.* at 10-11.

[51] *Id.* at 11.

[52] 47 C.F.R. §§ 1.774 and 69.701 *et seq*.

[53] *See*, *e.g., Petition of Indiana Bell Telephone Company, Incorporated (Ameritech Indiana) And The Ohio Bell Telephone Company (Ameritech Ohio) for Pricing Flexibility Under §69.727 of the Commission's Rules for the Specific MSAs*, WCB/Pricing File No. 07-07, 22 FCC Rcd 9174 (Wireline Comp. Bur. May 18, 2007).

[54] Sprint Nextel agrees that Cincinnati Bell met the applicable triggers for a grant of pricing flexibility but opposes the petition because it believes the applicable triggers "fail to measure accurately the true state of competition in the special access and dedicated transport markets." Sprint Nextel Opposition at 1.

IV. ORDERING CLAUSE

16. Accordingly, IT IS ORDERED that, pursuant to section 1.774 of the Commission's rules, 47 C.F.R. § 1.774, the *Pricing Flexibility Order,* and the authority delegated by sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, the petition filed by Cincinnati Bell Telephone Company LLC IS GRANTED to the extent detailed herein.

FEDERAL COMMUNICATIONS COMMISSION

Dana R. Shaffer
Chief, Wireline Competition Bureau

APPENDIX
SERVICES QUALIFYING FOR PRICING FLEXIBILITY

Trunking Services Basket (Includes entrance facilities, direct trunked transport, flat-rated portion of tandem-switched transport, and the optional features and functions associated with these services.)

Voice Grade
DS1
DS3
CCS/SS7 Interconnection Service

Special Access Basket (Includes channel terminations between the end office and the customer premises, channel terminations between the IXC POP and the serving wire center, channel mileage and optional features and functions associated with these services.)

Voice Grade
Program Audio
Video
Digital Data
Frame Relay Service
DS1
DS3
OC-Service
Shared SONET Service